that the purchaser must pay interest on the purchase price from March, 1912, until May, 1913. The decision is obviously correct. The vendee, by a definitive appropriation of the purchase price, with notice to the vendor, may stop the running of interest.[14] But there was a period between the two dates when the vendor was in a position to convey title to the property, and according to the rules above outlined, the vendee should be obliged to pay interest for that interval. Although the case did not decide the point, it seems, also, that the vendee is entitled to the rents and profits of the land during that period.

ADMISSIBILITY OF EXTRINSIC EVIDENCE TO ESTABLISH AN INSTRUMENT AS A WILL.—The courts are frequently called upon to determine whether a certain instrument is to operate as a testamentary disposition of the maker's property. The law has made no particular form or technical language requisite to the validity of a will,[1] and although a writing purports on its face to be an assignment, a letter, or a deed, it may nevertheless be effective as a will.[2] The particular name given to it by the maker, or his belief as to its character, while evidence of his intention, are not in themselves conclusive. The fundamental test in each case is the intention of the maker with reference to the effect the instrument should have. Did he intend that it should operate to convey a present, irrevocable interest, or was it to pass no interest until after his death? If the latter, it is his will regardless of its form, and effective as such, if executed in the manner required by the Statute of Wills.[3] The question then arises as to how the court, in a given case, is to ascertain the intention of the maker. It may be definitely expressed by the terms of the instrument; or, as often happens, it may be doubtful from the form of the writing, or from the expressions employed, whether it was intended to have a present or a posthumous effect. In the latter case, the authorities are in accord in admitting extrinsic evidence to aid the court in finding the true intention.[4]

Cases often arise, however, where no indication whatever as to the maker's intention is apparent, except from the form of the instrument. For example, a writing in form a will, and properly executed

[14]Dyson *v.* Hornby (1851) 4 DeG. & Sm. 481; Bostwick *v.* Beach, *supra*; see Steenrod *v.* Wheeling etc. R. R. (1885) 27 W. Va. 1. It has been intimated that a notice of rescission of the contract has the same effect. See Rutledge *v.* Smith (S. C. 1826) 1 McC. Ch. 399. The money so appropriated, however, does not belong to the vendor, and any gain or loss is the vendee's. Roberts *v.* Massey (1807) 13 Ves. Jr. *561. Where the contract provides for the payment of interest from the date set for performance, an appropriation of the purchase money, even though with notice to the vendor, will not stop the running of interest. *In re* Riley (1886) L. R. 34 Ch. Div. 386.

[1]Gardner, Wills, § 31.

[2]Robinson *v.* Brewster (1892) 140 Ill. 649, 659; Barney *v.* Hays (1892) 11 Mont. 571; Jordan *v.* Jordan's Admr. (1880) 65 Ala. 301; Sperber *v.* Balster (1881) 66 Ga. 317. If the instrument passes an interest *in praesenti*, though the right of enjoyment be postponed until the death of the maker, it is nevertheless a deed. Lauck *v.* Logan (1898) 45 W. Va. 251.

[3]Schouler, Wills, §§ 265, 272.

[4]Robertson *v.* Dunn (1812) 6 N. C. 133; Kelleher *v.* Kernan (1883) 60 Md. 440; Sharp *v.* Hall (1888) 86 Ala. 10.

as such, may have been made with no intention that it should so operate; or, conversely, an instrument may contain none of the features of a will, nor any words from which the real intention of the maker that it should be his testament may be inferred. The recent case of *Maris* v. *Adams* (Tex. 1914) 166 S. W. 475, is an illustration of the latter class. The proponent offered for probate an envelope and two enclosed papers as the last will and testament of the deceased. No testamentary intent was disclosed by the papers themselves, but parol evidence was offered to show that the deceased intended them to operate as his will. This evidence was held by a majority of the court to be inadmissible.[5]

The authorities are by no means in accord upon the question presented. The English, and some American authorities, admit the evidence both to prove that the writing was intended to be a will,[6] or though purporting to be a will, that it was executed without an *animus testandi*.[7] On the other hand, several recent cases have excluded extrinsic evidence to prove intent where nothing appears in the writing indicating a testamentary character;[8] and others, presuming conclusively an *animus testandi* from the fact of due execution, do not permit its non-existence to be shown.[9] The objection is generally offered that to admit extrinsic evidence would be to change the legal effect of the instrument, to "vary, contradict, or add to", its terms.[10] It is settled, however, that evidence tending to show that an instrument never in fact had a legal existence is not within this objection; for example, extrinsic evidence is admitted in the case of a writing which purports to be a valid contract to show that some condition precedent to the inception of the obligation has not been performed.[11] The evidence offered to show the lack of intent is admitted, therefore, to show that the instrument is not in fact a will.[12] It is contended that the parol testimony showing that the writing was intended as a will, is not offered to contradict the language of the instrument, but to determine the legal effect the maker intended it to have—whether to pass a present interest, or to have a posthumous effect only—or, in other words, to determine the time when it was intended to become operative.[13] It is more difficult, however, to show that this case is not within the general objection mentioned above, for to

[5]The papers in the principal case could not have operated as a will in any event, since not subscribed and attested as required by the statute; nor as a holographic will, because not wholly in the handwriting of the deceased.

[6]King's Proctor *v.* Daines (1830) 3 Hagg. 218; Jones *v.* Nicolay (1850) 2 Robertson 288; Wareham *v.* Sellers (Md. 1837) 9 Gill. & J. 98; Clark *v.* Ransom (1875) 50 Cal. 595; see Kisecker's Estate (1899) 190 Pa. 476.

[7]Nichols *v.* Nichols (1814) 2 Phillimore 180; Lister *v.* Smith (1863) 3 Sw. & Tr. 282; Fleming *v.* Morrison (1904) 187 Mass. 120.

[8]Clay *v.* Layton (1903) 134 Mich. 317; Noble *v.* Fickes (1907) 230 Ill. 594.

[9]*In re* Kennedy's Estate (1910) 159 Mich. 548; Brown *v.* Avery (1912) 63 Fla. 355.

[10]As to the admissibility of parol evidence to explain the terms of a will, see 11 Columbia Law Rev., 670.

[11]Pym *v.* Campbell (1856) 6 E. & B. 370.

[12]See Davis *v.* Rogers (1855) 6 Del. 44, 92.

[13]*Cf.* dissenting opinion in Noble *v.* Fickes, *supra*.

allow the real intention to be shown would, in effect, give validity to a writing as a will in spite of its terms which unambiguously assert that it is something else; while in the other case, the effect is not to give validity to the instrument as something else, but merely to show that it is not what it purports to be.

It is obvious that if extrinsic evidence is excluded in these cases, the real intention of the testator may, in some instances, be defeated.[14] In the one case, the deceased is declared intestate although the instrument was intended as his will, and in the other, an instrument though not executed with testamentary intent, is given effect as a will, contrary to the intention of the maker. It is likewise obvious that to admit extrinsic evidence might often result in the defeat of the maker's intention by fraudulent testimony. Its admission tends to subject all wills to the parol story that the testator did not mean what he said; or to make a will for the deceased where none was intended. The cases admitting it are careful to observe that the *prima facie* meaning may be shown not to be the real meaning only by the most clear and cogent proof.[15] The Statute of Wills affords an instance where certain requirements, though sometimes defeating intention and working hardship, are considered necessary for the prevention of fraud; and, having due regard for the case where the instrument is ambiguous, the exclusion of extrinsic evidence in the cases under discussion may be deemed salutary in safeguarding the intention of the testator.[16]

RIGHT OF A HOMICIDE TO ACQUIRE PROPERTY AS A RESULT OF HIS CRIME.—The question as to whether a person who has slain another may profit by the death of his victim, has not often been raised for determination in courts of last resort. It is an interesting question, however, and especially so in view of the comparative frequency of its appearance in recent years. Broadly speaking, there are three classes of cases in which this point presents itself for consideration: (1) where the beneficiary of an insurance policy has killed the insured, and seeks to collect the insurance; (2) where one who is a devisee has slain his testator, and subsequently claims the devise; (3) where the slayer of an intestate seeks, either at common law or under some statute of descent and distribution, to share in the estate of the deceased. Of course, the action is usually not brought by the murderer himself, but by someone claiming under him as assignee, heir or personal representative. The rights to be considered, however, are those of the criminal, barring the exceptional case of an assignee who is an innocent purchaser for value.

In the two earliest cases discussing this question, in England and the United States, the murderer had secured insurance upon the life of his victim with the intention of precipitating the latter's death and collecting the value of the policy.[1] It was held in each case that the policy was void, as it had been obtained with intent to defraud;

[14]Dodson *v.* Dodson (1905) 142 Mich. 586; Clay *v.* Layton, *supra.*

[15]See Lister *v.* Smith, *supra.*

[16]See note entitled "The Admissibility of a Testator's Declaration Disclosing Intention", 10 Columbia Law Rev., 469.

[1]The Prince of Wales, etc. Assn. Co. *v.* Palmer (1858) 25 Beav. 605; New York Mutual Life Ins. Co. *v.* Armstrong (1886) 117 U. S. 591.